

# COMMITTEE REPORT

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## MADAM PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 243, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 utilities.
- 4 Delete everything after the enacting clause and insert the
- 5 following:
- 6 SECTION 1. IC 8-1-14.5 IS ADDED TO THE INDIANA CODE
- 7 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2008]:
- 9 **Chapter 14.5. Tree Cutting Activity by Electric Utilities**
- 10 **Sec. 1. (a) As used in this chapter, "affected property owner"**
- 11 **means the record owner of real property on which a utility plans**
- 12 **to perform tree cutting activity.**
- 13 **(b) The term does not include a property owner that is a**
- 14 **governmental unit.**
- 15 **Sec. 2. As used in this chapter, "tree cutting activity" means:**
- 16 **(1) the trimming or pruning of one (1) or more trees; or**
- 17 **(2) the cutting down and removal of one (1) or more trees.**
- 18 **Sec. 3. As used in this chapter, "utility" refers to any of the**
- 19 **following:**
- 20 **(1) A public utility (as defined in IC 8-1-2-1(a)).**
- 21 **(2) A municipally owned utility (as defined in IC 8-1-2-1(h)).**
- 22 **(3) A corporation organized under IC 8-1-13.**
- 23 **(4) A corporation organized under IC 23-17 that:**
- 24 **(A) is an electric cooperative; and**
- 25 **(B) has at least one (1) member that is a corporation**
- 26 **organized under IC 8-1-13.**

1           **Sec. 4. In performing any tree cutting activity, a utility shall**  
 2 **follow the tree care and maintenance standard practices set forth**  
 3 **by the American National Standards Institute (ANSI).**

4           **Sec. 5. (a) Not later than November 1, 2008, a utility shall**  
 5 **establish written policies:**

6               **(1) providing dispute resolution procedures for affected**  
 7 **property owners; and**

8               **(2) describing other rights and remedies, if any, that the**  
 9 **utility provides to affected property owners.**

10           **(b) The policies required under subsection (a)(1) must provide**  
 11 **that an affected property owner is entitled to appeal to the**  
 12 **commission any resolution of a case reached through the utility's**  
 13 **dispute resolution procedures.**

14           **(c) Not later than December 1, 2008, a utility shall make the**  
 15 **policies established under subsection (a) available to the public**  
 16 **through the following means:**

17               **(1) A written copy of the policies shall be kept on file and**  
 18 **made open to public inspection in every station or office of**  
 19 **the utility where payments may be made by customers.**

20               **(2) The policies must be included in the informational**  
 21 **pamphlet the utility is required to provide to customers**  
 22 **under 170 IAC 4-1-18.**

23               **(3) The utility shall provide an electronic copy of the policies**  
 24 **to the commission. The commission shall make all policies**  
 25 **submitted under this subdivision available:**

26                   **(A) for public inspection and copying at the offices of the**  
 27 **commission under IC 5-14-3; and**

28                   **(B) electronically through the computer gateway**  
 29 **administered by the office of technology established by**  
 30 **IC 4-13.1-2-1.**

31               **(4) The policies shall be available on a publicly accessible**  
 32 **web site of the utility.**

33               **(5) The policies shall be available through an option to a**  
 34 **caller of a toll free telephone number established by the**  
 35 **utility. The toll free telephone number required by this**  
 36 **subdivision must also provide an option allowing the caller**  
 37 **to speak with a representative of the utility.**

38           **(d) The policies established by a utility under this section shall**  
 39 **take effect on January 1, 2009.**

40           **Sec. 6. (a) Except as provided in section 9 of this chapter, not**  
 41 **more than ninety (90) days before or less than twenty-one (21) days**  
 42 **before performing any tree cutting activity planned to occur after**  
 43 **December 31, 2008, a utility shall send notice by United States mail**  
 44 **of the planned tree cutting activity to the following:**

45               **(1) The municipal executive of a municipality in which any**  
 46 **part of the tree cutting activity will occur.**

47               **(2) If any part of the tree cutting activity will occur in an**  
 48 **unincorporated area of a county, the county executive.**

49           **(b) The notice required in subsection (a) must include:**

50               **(1) maps;**

1           (2) a description by street address, if any; or  
 2           (3) another common description;  
 3 of the area to be affected by the tree cutting activity. The municipal  
 4 or county executive shall keep on file and make open for public  
 5 inspection the materials received under this subsection.

6           Sec. 7. (a) Except as provided in section 9 of this chapter, not  
 7 more than ninety (90) days before or less than twenty-one (21) days  
 8 before performing any tree cutting activity planned to occur after  
 9 December 31, 2008, a utility shall provide the following notice of  
 10 the planned tree cutting activity to affected property owners:

11           (1) Notice by publication in one (1) newspaper of general  
 12 circulation in the municipality or county where the tree  
 13 cutting activity will occur. The notice required by this  
 14 subdivision must include a description by street address, if  
 15 any, or other common description of the area to be affected  
 16 by the tree cutting activity.

17           (2) Notice by United States mail to each affected property  
 18 owner. The notice required by this subdivision must include  
 19 the following:

20           (A) A statement of the tree cutting activity planned.

21           (B) A statement that the written policies required by  
 22 section 5(a) of this chapter are available for public  
 23 inspection in the public offices of the utility and the  
 24 office of the commission, as required by section 5(c) of  
 25 this chapter.

26           (C) The web site address of:

27           (i) the utility; and

28           (ii) the commission;

29           at which the policies required by section 5(a) of this  
 30 chapter may be viewed, as required by section 5(c) of  
 31 this chapter.

32           (D) The toll free telephone number required by section  
 33 5(c) of this chapter.

34           (E) A statement that an affected property owner may  
 35 appeal the planned tree cutting activity through the  
 36 dispute resolution procedures of the utility. The  
 37 statement required by this clause must inform the  
 38 affected property owner of the right to appeal to the  
 39 commission any resolution reached through the utility's  
 40 procedures.

41           (F) A publicly accessible:

42           (i) toll free telephone number; and

43           (ii) web site address;

44           for the office of utility consumer counselor.

45           (G) A statement that maps, a description by street  
 46 address, or another common description of the affected  
 47 area is available for public inspection in the office of the  
 48 county or municipal executive, as required by section  
 49 6(b) of this chapter.

50           (b) The duty of a utility to provide notice under subsection

(a)(2) requires the utility to notify only affected property owners. If a person other than the affected property owner resides on an affected parcel of land, it is the responsibility of the affected property owner to notify the resident of the planned tree cutting activity. A utility does not have a duty to extend any rights, remedies, or policies established under section 5 of this chapter to a resident who is not an affected property owner.

Sec. 8. (a) If an affected property owner wishes to appeal the planned tree cutting activity described in the notice required under section 7(a)(2) of this chapter, the affected property owner must initiate the dispute resolution procedures provided by the utility not later than fourteen (14) days after receiving the notice.

(b) Except as provided in section 9 of this chapter, if an affected property owner has initiated dispute resolution procedures under subsection (a), a utility may not perform any tree cutting activity on the affected property owner's property while the dispute resolution procedures are pending. If the affected property owner wishes to appeal the resolution of the case reached through the utility's dispute resolution procedures, the affected property owner must:

- (1) initiate an appeal with the commission; and
- (2) notify the utility of the appeal;

not later than ten (10) days after the date of the case's resolution. If the utility does not receive notice of an appeal within the time prescribed in this subsection, the utility may begin the planned tree cutting activity, subject to any specifications or limitations reached through the dispute resolution procedures.

(c) Except as provided in section 9 of this chapter, if a utility receives notice of an appeal to the commission within the time prescribed in subsection (b), a utility may not perform any tree cutting activity on the affected property owner's property while the appeal is pending.

Sec. 9. A utility is exempt from the requirements of sections 6, 7, and 8 of this chapter if:

- (1) in response to an emergency, the commission acts under IC 8-1-2-113 to temporarily alter, suspend, or amend the policies adopted by the utility under section 5(a) of this chapter; or
- (2) the utility determines that an emergency exists that requires the utility to undertake immediate action that includes tree cutting activity in order to:
  - (A) prevent endangerment to life or property; or
  - (B) ensure the safety, reliability, or power quality of the utility's electric distribution system;
 subject to verification by the commission.

Sec. 10. (a) The commission has the sole authority to hear and determine complaints that a utility has failed to comply with this chapter.

(b) The commission may adopt rules under IC 4-22-2 to implement this chapter.

1           SECTION 2. IC 8-20-1-28 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 28. Public and  
 3 municipally owned utilities are authorized to construct, operate, and  
 4 maintain their poles, facilities, appliances, and fixtures upon, along,  
 5 under, and across any of the public roads, highways, and waters outside  
 6 of municipalities, as long as they do not interfere with the ordinary and  
 7 normal public use of the roadway, as defined in IC 9-13-2-157.  
 8 However, the utility shall review its plans with the county executive  
 9 before locating the pole, facility, appliance, or fixture. **Subject to the**  
 10 **requirements of IC 8-1-14.5**, the utility may trim any tree along the  
 11 road or highway, but may not cut down and remove the tree without the  
 12 consent of the abutting property owners, unless the cutting or removal  
 13 is required by rule or order of the Indiana utility regulatory  
 14 commission. The utility may not locate a pole where it interferes with  
 15 the ingress or egress from adjoining land.

16           SECTION 3. [EFFECTIVE UPON PASSAGE] (a) **As used in this**  
 17 **SECTION, "commission" refers to the Indiana utility regulatory**  
 18 **commission created by IC 8-1-1-2.**

19           (b) **The commission may adopt any rules necessary to**  
 20 **implement IC 8-1-14.5, as added by this act, in the same manner as**  
 21 **emergency rules are adopted under IC 4-22-2-37.1. Any rules**  
 22 **adopted under this SECTION must be adopted not later than**  
 23 **September 1, 2008. A rule adopted under this SECTION expires on**  
 24 **the earlier of:**

25           (1) **the date the rule is adopted by the authority under**  
 26 **IC 4-22-2-24 through IC 4-22-2-36; or**

27           (2) **January 1, 2010.**

28           (c) **This SECTION expires January 1, 2010.**

29           SECTION 4. **An emergency is declared for this act.**

(Reference is to SB243 as introduced.)

**and when so amended that said bill be reassigned to the Senate Committee on Utilities and Regulatory Affairs.**

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LONG, Chairperson